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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,330	10/31/2003	Todd L. Phillips	15911/09063	9673

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NELSON MULLINS RILEY & SCARBOROUGH, LLP  
1320 MAIN STREET, 17TH FLOOR  
COLUMBIA, SC 29201

EXAMINER
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CARIASO, ALAN B

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/698,330

Applicant(s)

PHILLIPS, TODD L.

Examiner

Alan Cariaso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-19 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040224</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by AVERY (US 1,976,712).

3. AVERY discloses a light fixture comprising: a candle base (69, fig.1); at least one candle assembly or stand (16, fig.3) having a light bulb socket (19) adapted to carry or receive a light bulb (20) with an attachment base (col.1, lines 86-88); and a translucent candle cover (79) formed by an elongated sleeve (col.3, lines 20-38) mounted on each said candle assembly or stand (16), said sleeve (79) having a length defined between a top portion and a bottom portion (figs.1 & 7), said sleeve (79) having a longitudinal bore (fig.1) therethrough which is dimension to receive said stand (16), wherein said length has sufficient dimension to extend said top portion of said sleeve (79) above said attachment base (fig.1) of said light bulb (20) attached to said socket (19); wherein said sleeve (79) is formed from transparent glass (col.3, line 27).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over AVERY (US 1,976,712).

6. AVERY discloses the claimed invention, but does not disclose: said length being dimensioned to extend said top portion of said sleeve between approximately 1/8-1/4 inch or approximately 1/4 inch above said attachment base of said light bulb (claims 2,3,10,11).

7. AVERY teaches the top portion of the translucent candle cover or sleeve (79) extending above the attachment base of the bulb (20) until the top portion appears to reach a circumferential bottom portion of the bulb envelope (fig.1) at least for the purpose of enclosing and insulating the internal electrical elements with the lining (80) from sight and electrical exposure (col.3, lines 20-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle light assembly of AVERY to include the top portion of the translucent candle cover or sleeve extending an optimal fraction of an inch since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (In re Aller, 220 F.2d 454,456, 105 USPQ 233,235). One would have been motivated to set the extent of the top portion of the sleeve above the attachment base to be about 1/8-1/4 inch since that may be the estimated range for a sleeve or cover that covers the bulb base and extends fully (vertically) to reach bottom portions of most envelopes of the sleeve or cover in

order to enclose and insulate the internal electrical elements (as in the attachment bulb base) from exposure to dirt or unsafe touching.

8. Claims 5, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over AVERY (US 1,976,712) in view of TIGHE (US 2,032,451).

9. AVERY discloses the claimed invention, but does not disclose: an interior surface of said longitudinal bore is coated with fired paint or with a colored material to provide a translucent layer formed by fired paint.

10. TIGHE teaches a candle body (1) being a transparent colored glass or vitreous material blown by heat (page 1, col.2, lines 12-35) at least on either inside and outside for the purposes of simulating the appearance of an ordinary candle flame and hide the interior bulb supporting core and body filling (4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle light assembly of AVERY to include the type of colored glass blown by heat as taught by TIGHE in order to simulate the appearance of an ordinary candle flame and hide the interior bulb core and body filling so as to increase aesthetic that would simulate a candle with flame.

11. Claims 6, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over AVERY (US 1,976,712) in view of MCFADDEN (US 1,568,232).

12. AVERY discloses the claimed invention, but does not disclose: an exterior surface of said sleeve having surface ornamentation formed to simulate candle wax dripping.

13. MCFADDEN teaches surface ornamentation formed to simulate candle wax dripping (figs. 1, 2, 4 & 6) on the top portion of the candle body or sleeve (2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candle light assembly of AVERY to include the type of exterior ornamentation as taught by MCFADDEN in order to simulate a real candle with drippings as if melted by a real candle flame so as to further make the candle device appear real.

14. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over HALL (US 1,842,167) in view of LEDERER (US 5,863,108).

15. HALL discloses a candle cover (20, fig.2) for a light fixture candle assembly, said candle cover comprising: an elongated sleeve (20) formed of transparent glass (col.2, lines 2-4); said sleeve (20) having a length defined between a top portion (top open end of 20, fig.2) and a bottom portion (bottom sealed end adjacent base 11, fig.2), said sleeve (20) having a longitudinal bore (longitudinal space between 26 and 20, figs.2-3) extending from said bottom portion to said top portion, said sleeve (20) having a shoulder extending radially inward (fig.2) in said top portion to define a top hole (col.2, lines 3-4); said sleeve (20) being colored (col.2, line 33), with a suggestion of coloring at least composite parts (24,23) by flame tinting (col.2, lines 29-32). However, HALL does

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not disclose an interior surface or longitudinal bore of said sleeve (20) being coated with a colored material.

16. LEDERER teaches a candle cover (10,11) coated on its interior surface with a colored film wrap (13, col.2, lines 38-49) for the purpose of providing decorative coloring to the cylindrical holder or cover (10,11) and providing the effect of a wax candle (col.2, lines 1-14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the colored candle light assembly of HALL to include the type of colored coated material on the interior surface of the candle cover as taught by LEDERER in order to provide decorative coloring and effect of a wax candle while minimizing exposure to any unintended exterior physical alteration.

17. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over HALL (US 1,842,167) in view of LEDERER (US 5,863,108) as applied to claim 17 above, and further in view of CHARLES (US 1,893,730).

18. HALL modified by LEDERER discloses the claimed invention except surface ornamentation formed on an exterior surface of said sleeve to simulate candle wax dripping.

19. CHARLES shows a candle glass body (1, fig.2) having wax dripping ornamentation formed on its exterior surface for the purpose of simulating a real candle partially melted from heated dripping wax. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the colored candle light assembly of HALL to include the type of exterior wax dripping ornamentation

formed on the exterior surface of the candle cover as taught by CHARLES in order to simulate a real candle dripping wax from its simulated flame.

### ***Allowable Subject Matter***

20. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

21. The following is a statement of reasons for the indication of allowable subject matter: Claims 8 and 9 have allowable subject matter not suggested by the prior art of record, of said sleeve defining a shoulder extending radially inward in said top portion of said sleeve to define a top hole having a smaller dimension than said longitudinal bore in combination with said length (of said elongated sleeve) having sufficient dimension to extend said top portion of said sleeve above said attachment base of said light bulb attached to said socket.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WAGNER (US 676,289) and TROTTER (US 1,486,815) show tapered top portions of candle light cover (E) or tubular member (50) forming top openings and extending above the bulb base. HOPTON (US 978,163) shows a shoulder at a top portion of the candle light glass cover or sleeve (2) extending radially inward toward the bulb base. HARRIGAN (US 3,767,910) shows a tubular candle cover




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or slide (15,23) formed with top portion shoulder or lip (26) extending radially inward to form top opening (25) which guides input light into the cover or slide (15,23) and disperse in the fluted surfaces (23).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso  
Primary Examiner  
Art Unit 2875

June 20, 2005  
AC